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Say on Purpose: Lessons from Chinese Corporate Charters

Li-Wen Lin*

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Abstract

What is the purpose of the corporation? The debate has continued for a long time without a clear answer partly because corporate law is often silent or ambiguous on the purpose of the corporation. The debate is largely academic and has limited dialogues with corporations that manage business in the real world. If corporations themselves articulate the purpose in their constitutive documents, it might be helpful to resolve the corporate purpose controversy. China offers a valuable empirical setting to examine how corporations formally state the purpose in their corporate charters. The empirical findings in this article show that the purpose clause in the articles of incorporation is not static but evolving with institutional and organizational demands. However, the purpose clause serves only a signaling or marketing function because of external and intrinsic constraints.

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1. Introduction

What is the purpose of the corporation? Is it to maximize shareholder wealth or to achieve some other set of social, political, or economic goals? This question has been the focus of a major scholarly debate that has continued for a long time without a definite answer.¹ An important legal reason for the corporate purpose debate is that sources of corporate law are often silent or vague about the normative objective of the corporation. Corporate statutes often do not articulate the normative objective of the company.² Available judicial opinions may be conflicting or unclear, which results in divergent interpretations.³ Moreover, corporate constitutions (including corporate charters and bylaws) as internal governance law usually do not stipulate the normative purpose of the company.⁴ To date, scholars in the corporate purpose debate have focused on interpreting corporate statutes and court decisions while having paid little attention to corporate constitutions. Corporate constitutions are a useful source to reflect

¹ Existing legal scholarship often traces the origin of the corporate purpose debate to two articles published in the Harvard Law Review in the early 1930s. Adolf A. Berle, 'Corporate Powers as Powers in Trust' (1931) 44 Harvard Law Review 1049; E. Merrick Dodd, 'For Whom Are Corporate Managers Trustees' (1932) 45 Harvard Law Review 1145.

² For instance, most corporate statutes in the United States simply provide that the purpose is to 'engage in any lawful act or activity'. Delaware General Corporation Law Section 101(b) provides that 'A corporation may be incorporated or organized under this chapter to conduct or promote any lawful business or purposes, except as may otherwise be provided by the Constitution or other law of this State'. In Canada, the Canada Business Corporations Act makes no express reference to the objective of the corporation.

³ In the United States, scholars have different views on whether corporate law requires directors to maximize shareholder wealth. For the view that the law requires shareholder wealth maximization, George A. Mocsary, 'Freedom of Corporate Purpose' (2017) 2016 Brigham Young University Law Review 1319; Stephen M. Bainbridge, 'In Defense of the Shareholder Wealth Maximization Norm' (1993) 50 Washington & Lee Law Review 1423. For the view that the law does not require shareholder wealth maximization, Lynn A. Stout, 'Why We Should Stop Teaching Dodge v. Ford' (2008) 3 Virginia Law & Business Review 163; Gordon Smith, 'The Shareholder Primacy Norm' (1998) 23 Journal of Corporation Law 277; Lyman Johnson and David Millon, 'Corporate Law after Hobby Lobby' (2014/2015) 70 The Business Lawyer 1. In Canada, the recent landmark case with regard to the purpose of the corporation is BCE Inc. v. 1976 Debentureholders (2008 SCC 69). Canadian legal practitioners split on interpretations of the case. Carol Liao, 'A Canadian Model of Corporate Governance' (2014) 37 Dalhousie Law Journal 559.

⁴ Lynn A. Stout, *The Shareholder Value Myth: How Putting Shareholders First Harms Investors, Corporations, and the Public* (Berrett-Koehler 2012) 28 (noting that 'the overwhelming majority of corporate charters simply state that the corporation's purpose is to do anything lawful'). Andrew Keay, 'Shareholder Primacy in Corporate Law: Can It Survive? Should It Survive?' (2010) 7 European Company and Financial Law Review 369 (observing that corporate charters in UK, US, Australia and elsewhere rarely provide expressly that the purpose of the corporation is to maximize shareholder wealth).

how corporations themselves say about their own purposes. They offer a bottom-up perspective to see the corporate objective, as opposed to the top-down view given by legislation or judicial decisions. The bottom-up view has practical importance given that corporations are the entities that carry out the purpose on a daily basis. With the bottom-up approach in mind, some scholars have turned to alternative sources such as corporate websites, employee interviews and annual reports to empirically discover how corporations themselves state their objectives.⁵ While insightful, this approach is subject to important limitations. Corporate purposes identified through such information sources are usually non-legally-binding, non-official, and influenced by researchers' subjective interpretations.

From a legal perspective, it would be helpful if a company's constitutive documents such as corporate charters include an express statement of the normative purpose of the company. Unfortunately, most jurisdictions in the world do not require such a normative statement in corporate charters. Hypothetically, if companies were required to make a firm-specific purpose statement in their corporate charters, what would they say? China offers a unique empirical setting to answer this hypothetical question. In China, listed companies always include a firm-specific purpose clause in the articles of incorporation. Their purpose statements are not a boilerplate that 'the purpose of the corporation is to engage in any lawful act or activity' as seen

⁵ Malcolm Anderson et al., 'Shareholder Primacy and Directors' Duties: An Australian Perspective' (2008) 8 *Journal of Corporate Law Studies* 161 (surveying Australian directors' views on shareholder primacy); Reegan Grayson Morison and Ian Ramsay, 'An Analysis of Companies' Business Objectives' (2014) 32 *Company and Securities Law Journal* 438 (empirically identifying corporate purposes of top 100 companies listed on the Australian Securities Exchange by screening information from annual reports and information posted on corporate websites); Claudine Gartenberg, 'Corporate Purpose and Financial Performance' *Organization Science* (forthcoming) (measuring corporate purpose with survey data on employees' perception); Luigi Guiso et al., 'The Value of Corporate Culture' (2015) 117 *Journal of Financial Economics* 60 (relying on information posted on corporate websites to analyze corporate culture of S&P 500 companies); PWC, '19th Annual Global CEO Survey / January 2016: Redefining Business Success in a Changing World' (surveying 1982 CEOs globally and asking questions including 'In your own words, what is the purpose of your organization today?'), < <https://www.pwc.com/gx/en/ceo-survey/2016/landing-page/pwc-19th-annual-global-ceo-survey.pdf> > accessed 4 November, 2018.

in Delaware and many other jurisdictions. Instead, each Chinese listed company devises its own purpose statement. Some interesting major findings emerge from the analysis of their corporate purpose clauses. First, the pursuit of shareholder value usually is not the single exclusive goal of the corporation. While companies regard shareholders as an important stakeholder group, they also often emphasize the importance of other stakeholders including society, consumers, employees, etc. Second, the prevailing purpose is not static but evolving. Companies follow trends in constructing the purpose statement. Third, legal, economic and political institutions shape the corporate purpose. China's corporate law and state capitalism leave salient marks on the purpose statement. Fourth, the function of the corporate purpose clause in the charter is more a signaling or branding device than a reflection of what the company actually does. Contrary to a popular belief that shareholder primacy is good for financial performance, companies that disregard shareholders in the purpose clause have better financial performance than those that acknowledge shareholders. Poor performing firms may have more incentives in highlighting the importance of shareholders in the purpose clause to signal their commitment to shareholder value while better performing firms may have more leeway to focus beyond shareholder value. Meanwhile, there is little evidence that emphasizing non-shareholder stakeholders in the purpose clause is associated with better corporate social responsibility performance.

The empirical investigation of the purpose clause in the articles of incorporation provides a practical lens to revisit the corporate purpose debate. The prolonged purpose debate has been largely driven by scholars' normative expectations and with limited formal voice from corporations themselves, those who have actual control over the construction of purpose. The pragmatic language used in the corporate purpose provision is rather different from the standard terms in the scholarly debate. The purposes envisioned by scholars tend to be idealistic while the

purposes professed by companies are strategic in response to organizational and institutional demands. Moreover, the variety of corporate purposes in corporate charters appears to present contractual freedom as a promising solution to the purpose controversy. However, the contractual nature of the purpose statement is far from self-contained and self-enforcing. The effectiveness of this contractual approach faces institutional constraints and intrinsic problems. As a result, the corporate purpose, at least stated in the articles of incorporation, has limited importance in legal practice.

This article proceeds as follows. Section 2 gives a brief overview of China's relevant regulations on corporate purpose. Section 3 provides a hypothetical exercise of possible features of purpose clauses from a contractual perspective in the Chinese institutional context. Section 4 conducts an empirical analysis of the purpose clauses in Chinese listed companies' articles of incorporation. Section 5 evaluates the theoretical and practical implications of the empirical findings.

2. The Corporate Purpose Regulations in China

Similar to corporate statutes in other jurisdictions, China's corporate law does not include an express statement of corporate purpose. Nevertheless, its corporate statute indicates that profit maximization is not the single exclusive goal of the corporation. China's 1994 Company Act, the first national corporate statute since 1949, included a broad provision that 'Companies shall comply with the law, conform to business ethics, strengthen the construction of socialist civilization, and subject themselves to the government and public supervision in the course of doing business.'⁶ In 2004, China made a comprehensive revision to its corporate statute. The

⁶ Chinese Company Act (1994), art. 14.

reform efforts culminated in the 2006 Company Act. The new corporate law explicitly refers to the term of corporate social responsibility (CSR). Article 5 of the statute provides that ‘In the course of doing business, a company shall comply with laws and administrative regulations, conform to social morality and business ethics, act in good faith, subject itself to the government and the public supervision, and undertake social responsibility.’ Chinese scholars are debating the nature of Article 5. Some scholars take the view that Article 5 is simply a moral call given the great vagueness in the statutory language and no enforcement mechanisms for non-compliance.⁷ Other scholars see Article 5 is mandatory given that it is a fundamental legal principle and it should be applied to interpretations of all provisions throughout the corporate statute.⁸ A minimum consensus is that corporate decisions that consider CSR are obviously permitted and encouraged rather than prohibited.

For Chinese listed companies, the corporate purpose is governed by not only the corporate statute but also China Securities and Regulatory Commission (CSRC)’s regulations. CSRC promulgated the *Guidelines on Listed Companies’ Articles of Incorporation* in 1997.⁹ According to CSRC, a Chinese listed company may alter the content recommended in the *Guidelines* to accommodate its own needs as long as the alteration does not violate laws or regulations. While CSRC has revised the *Guidelines* several times since 1997, it always recommends a provision stipulating the operating purpose (*jingying zongzhi*) in the articles of incorporation.¹⁰ CSRC does not provide any template for the purpose provision, leaving it to the company’s discretion. In addition to the corporate purpose clause, the *Guidelines* recommend

⁷ Xiaoxing Chen, ‘Rational Consideration on the Legal Rule of Corporate Social Responsibility: A Comment on Article 5 of Chinese Company Law’ in Baoshu Wang (eds), *China Commercial Law Annual 2009* (Peking University Press 2009) 50-53 (in Chinese).

⁸ Junhai Liu, *Institutional Innovations of New Corporate Law: Legislative and Judicial Controversies* (Law Press 2007) 555 (in Chinese).

⁹ The Guidelines were first published on December 16, 1997 and then revised in 2006, 2014 and 2016.

¹⁰ The Guidelines on Listed Companies’ Articles of Incorporation (2016), art. 12.

listed companies to include a provision of the scope of business operation (*jingying fanwei*).

Under the business scope clause, listed companies usually provide a long list of business activities along industry or product lines.

The separation of the operating purpose clause and the business scope clause disaggregates the notion of corporate purpose into ‘strategic purpose’ and ‘tactical purpose.’¹¹ The operating purpose clause concerns the strategic purpose, ‘the ultimate end of the corporation’.¹² Shareholder wealth maximization is a good example. In contrast, the business scope clause is the company’s tactical purpose. It refers to the permitted scope of business, such as manufacturing cars or selling insurance. The tactical purpose was once part of the basis to limit corporate activities and liabilities through the doctrine of *ultra vires*. Historically, corporate acts that fell outside the scope of business specified in the corporate charter were considered invalid. The trend of modern statutes and judicial practices in many jurisdictions including China has been to abandon the doctrine of *ultra vires*.¹³ The distinction between the operating purpose clause and the business scope clause disentangles the purpose discussion from the mostly abolished doctrine of *ultra vires* and helps focus on the critical part of the purpose controversy.

¹¹ George A. Mocsary, ‘Freedom of Corporate Purpose’ (2017) 2016 Brigham Young University Law Review 1319, 1364-1365 (discussing the differences between strategic purpose and tactical purpose).

¹² Mocsary (n 11) 1365.

¹³ Chinese courts used to take the position that any corporate act outside the scope of business was invalid. In December 1999, the People’s Supreme Court of China overturned the position. See the Supreme People’s Court’s Interpretation I on Several Issues concerning the Application of the Contract Law of the People’s Republic of China, art. 10 (providing that ‘Where a party concludes a contract beyond its business scope, the people’s court shall not determine the contract as void for this reason, unless such a contract violates the state’s laws on restricted business operations, franchise operations or prohibited business operations’). China’s 2006 Company Act further removed the provision that required companies to do business within the scope of business operation.

3. Configuring the Purpose Clause: A Hypothetical Exercise

As Chinese corporate statutes and securities regulations provide little guidance on how to formulate the corporate purpose clause, how do Chinese public companies fill in the empty clause? This section develops some general hypotheses regarding the likely configuration of purpose clauses by drawing on the contractarian theory of the firm while taking into account the Chinese institutional context.

In the contractarian vision, the corporation is a web or nexus of explicit and implicit contracts among various parties associated with the firm, including shareholders, managers, employees, creditors, communities, etc.¹⁴ Corporate participants may draft customized contracts to govern their relationships. In this regard, it allows corporate participants to contractually determine the purpose of the corporation. One of the most important governance contracts is the articles of incorporation, an agreement to govern the relationship between the corporation and its shareholders. The agreement establishes rights and obligations that shareholders can legally enforce and that cannot be changed without a majority vote of shareholders. Consequently, the protection of shareholder interests is expected to be a primary feature of the purpose clause in the articles of incorporation.

Note that shareholders are not a homogenous group.¹⁵ They may carry different interests and thus hold different views on corporate purpose. In the Chinese context, the state-owner is often known to pursue non-economic goals such as social harmony, political stability, and control over national strategic resources.¹⁶ The state-owner may have interests to seek a

¹⁴ Frank H. Easterbrook and Daniel R. Fischel, *The Economic Structure Of Corporate Law* (Harvard University Press 1996) 1-39.

¹⁵ Daniel J.H. Greenwood, 'Fictional Shareholders: For Whom Are Corporate Managers Trustees, Revisited' (1996) 69 Southern California Law Review 1021.

¹⁶ Jiangyu Wang, 'The Political Logic of Corporate Governance in China's State-owned Enterprises' (2014) 47 Cornell International Law Journal 631 (explaining the strategic objectives of the Chinese state-owner and how that influences the governance structure of Chinese state-owned enterprises).

contractual term that pursues such non-economic objectives. In this regard, it suggests that state-controlled companies are more likely to include non-profit-seeking objectives in the purpose clause, compared with their non-state-owned counterparts.

The contractarian theory envisions diversity in contractual terms. As Easterbrook and Fischel said, ‘Agreements [including articles of incorporation] that have arisen are wonderfully diverse, matching the diversity of economic activity carried on within corporations.’¹⁷ Accordingly, corporate attributes such as industry and firm size may contribute to the contractual diversity. For instance, companies in different industries are expected to have dissimilar contractual terms including purpose clauses. Large and small firms may have different business development strategies, which may lead to divergent purpose clauses. In fact, such contractual diversity may arise from not only internal economic activity but also the external environment in which corporations operate. For instance, different geographical regions may present different economic, social, political, or institutional needs that give rise to divergent corporate purposes.

Moreover, time is another source of diversity as the external environment may change over time. Corporate purposes formulated in different temporal frames may be dissimilar from each other. The purpose clause as a legal statement of corporate objective may evolve particularly with changes in the legal environment. The express recognition of CSR in the 2006 Company Act is probably the most important legal change that may affect the configuration of the purpose clauses of Chinese companies. As noted in section 2, while the enforceability of the CSR provision under the corporate statute is controversial, it unquestionably creates a pro-CSR legal environment. One might expect that after the legal change in 2006 Chinese companies may

¹⁷ Easterbrook and Fischel (n 14) 12.

give more attention to non-shareholders' interests and/or less emphasis on shareholder wealth maximization in their purpose clauses.

As different companies face different internal and external needs, their purpose clauses may differ in countless possible ways.¹⁸ Given that it is infeasible to enumerate and compare all possible corporate objectives, a taxonomy approach may be a helpful way to describe the universe of corporate objectives. Scholars often see two kinds of corporate purposes: shareholder value maximization versus stakeholder welfare maximization.¹⁹ The former holds that the sole purpose of the corporation is to maximize profits for shareholders, whereas the latter views that the corporate purpose is to maximize welfare for all corporate participants including not only shareholders but also employees, suppliers, communities, etc. Intuitively, a pro-shareholder purpose is predicted to have a positive relationship with financial performance, whereas a pro-stakeholder purpose is expected to have a positive relationship with CSR performance.

4. An Empirical Analysis of Chinese Listed Companies' Purpose Clauses

At present, China has more than 3,000 companies listed on the Shanghai and Shenzhen Stock Exchanges. Using systematic sampling, this article examines a random sample of 337 companies listed on the two stock exchanges.²⁰ China's listed companies are required to publish

¹⁸ While contractarians take shareholder wealth maximization as the optimal purpose of the corporation, they acknowledge that corporate participants have freedom to customize the purpose. For instance, Professor Stephen Bainbridge recently indicated that shareholder wealth maximization is a default rule subject to the articles of incorporation. When discussing ice cream maker Ben & Jerry's social purpose, he wrote: "As a contractarian, however, if Ben & Jerry went public with a CSR provision in their articles, I'd have no objection." See Stephan Bainbridge, 'Does Ebay Spell Doom For Corporate Social Responsibility?', <http://www.professorbainbridge.com/professorbainbridge.com/2010/12/does-ebay-spell-doom-for-corporate-social-responsibility.html> accessed 24 January 2019.

¹⁹ For shareholder wealth maximization, see e.g., Stephen M. Bainbridge, 'Director Primacy: The Means and Ends of Corporate Governance' (2003) 97 Northwestern University Law Review 547. For stakeholder welfare maximization, see e.g., Edward R. Freeman, *Strategic Management: A Stakeholder Approach* (Pitman 1984).

²⁰ The sample is representative of the population. The sample and the population do not show any statistically difference in terms of ownership distribution, financial performance, listing year, geographical distribution and industry distribution.

their articles of incorporation. Their articles of incorporation were collected from CNINFO, the disclosure website officially designated by CSRC.²¹ The data collection was completed by the end of December 2017. This article focuses on the articles of incorporation effective as of 2017, but it also traces their historical amendments.

4.1. Component Analysis

Often, companies construct the purpose clause with the view to the interests of different stakeholders (including shareholders and others). This stakeholder-focus approach is probably influenced by the central question of the corporate purpose debate: in whose interest should the corporation be managed – shareholders, other stakeholders or the corporation itself? Table 1 shows the types of stakeholders expressly mentioned in the purpose clauses of the 2017 articles of incorporation. The categories are not mutually exclusive. A company may include various stakeholders in the purpose clause. Table 1 shows that shareholders are the most significant interest group, consistent with the prediction in section 3. Close to 69% of the sample firms expressly claim the importance of shareholder value, though the exact language of shareholder importance varies across companies. In the scholarly debate of corporate purpose, a popular view is that the corporation should ‘maximize’ shareholder wealth or act in the ‘best’ interest of shareholders. In the dataset, only a third of the companies that speak about shareholders (80/231) use the term of ‘maximization’ or ‘best’ return/interest. Often, companies use softer language including ‘good returns’, ‘satisfactory returns’, ‘reasonable returns’, ‘create value’ or ‘protect legal rights’ for shareholders.

²¹ CNINFO, <http://www.cninfo.com.cn/cninfo-new/index>.

In addition to shareholder value, Chinese listed companies usually claim to serve non-shareholder stakeholders' interests. As Table 1 shows, about 60% of the companies expressly claim to consider national, societal or regional interests in the course of doing business. About 37% of the companies treat the corporation as a distinct entity along with other stakeholders.²² Around 25% of the companies have an express emphasis on consumers' interests. Note that while Chinese corporate law addresses employees' interests, only 17.2% of the companies refer to employees in their purpose clauses. Only 0.6% of the companies include environmental protection in their purpose clauses. None of the companies mentions creditors. When companies include multiple stakeholders in the purpose clause, they rarely specify the priority of the stakeholders. It seems that most of the time companies treat all the mentioned stakeholders equally.

Table 1. Types of Stakeholders Expressly Included in the Purpose Clause (2017)

Type of Stakeholders	Number of Firms	Percentage of Firms
Shareholder	231	68.6%
Nation/Society/Region	202	59.9%
Corporation	126	37.4%
Consumer	84	24.9%
Employee	58	17.2%
Environment	2	0.6%
Creditor	0	0.0%

Source: data compiled by author.

²² For example, CSG Holding Co., Ltd.'s purpose clause is as follows: 'To take the development of China's glass industry and new energy as a responsibility, to be an industry leader with international competitiveness as the target, to create the maximum value for shareholders, to realize the co-creation, co-sharing and co-development for shareholders, *the corporation*, and employees' [emphasis added by author].

Table 2 examines the relationship between stakeholder references and ownership types.²³ Table 2 shows that 82% of the state-controlled companies refer to shareholders' interest in the purpose clause while 63% of the non-state-controlled companies do the same. The result is rather counterintuitive given that state-controlled companies are often known to pursue non-economic goals and be less committed to profit maximization.²⁴ Two hypotheses may be offered here to explain this puzzling observation. First, as the state is the controlling shareholder, the emphasis on shareholder value is consistent with the state's interests. The Chinese state-owner is known to pursue non-financial goals. In this regard, the meaning of shareholder value may be different from the typical understanding of shareholder wealth maximization that focuses on economic gains. Second, as state-owned enterprises are often criticized for their inferior financial performance, their emphasis on shareholder value in the purpose clause may be intended to signal their financial commitment to outside investors.

Table 2 also shows that the non-state-controlled firms are more likely to emphasize consumers' interests in the purpose clause, compared with their state-controlled counterparts. A possible explanation is that the non-state-controlled firms are more market-oriented and attentive to consumer demands. For other stakeholder types, the differences are not statistically significant between the state-controlled and the non-state-controlled companies.

²³ As an empirical matter, whether a listed firm is categorized as a state-controlled enterprise depends on the nature of the ultimate controlling shareholder. Chinese listed companies are required to state in the annual report the identity of the ultimate controlling shareholder. The database categorizes ownership types based on such information.

²⁴ Existing literature has provided a range of commonly stated reasons for state ownership, including providing public goods, improving labor relations, encouraging economic development and industrialization, etc. OECD, 'State-Owned Enterprise Governance: A Stocktaking of Government Rationales for Enterprise Ownership' (2015) < https://read.oecd-ilibrary.org/governance/state-owned-enterprise-governance_9789264239944-en#page1 > accessed 5 November 2018.

Table 2. Relationship between Stakeholder References and Ownership Types

Type of Stakeholders Referred	Ownership Type		Significance test
	State-Controlled	Non-State-Controlled	
Shareholder	82%	63%	significant (p=.001)
Nation/Society/Region	65%	58%	insignificant (p=.218)
Corporation	35%	38%	insignificant (p=.556)
Consumer	17%	28%	significant (p=.029)
Employee	14%	19%	insignificant (p=.311)
Environment	0%	0.8%	insignificant (p=.358)

Note: p-value < .05 indicates the difference is statistically significant.

As discussed above, framing corporate purposes around different stakeholders' interests is a common practice to formulate the purpose clauses. In addition, compliance with the law and internationalization are two other common ingredients of the purpose clauses. In the dataset, 16.9% of the companies mention compliance with the law and 22.8% refer to internationalization as part of the corporate purpose.

4.2. Trend Analysis

The hypothetical exercise in section 3 speculates that the purpose clause may change over time. In the dataset, 44 firms have ever made at least one amendment to their purpose clauses since 2004. Table 3 shows the types of change. Of the 44 amendments, five cases involve slight changes in the language used in the purpose clause.²⁵ Other 39 cases involve substantive changes

²⁵ For example, Wuhan Hanshang Group Co., Ltd. removed the second paragraph of its purpose clause. Its original purpose clause was as follows:

Paragraph I: 'Under the guidance of national macro adjustments and independent operation in response to market demands, to increase economic efficiency, labor productivity and assets as the goal, insist socialism as the operation direction, adequately use strong economic resources, human resources and rich modern management experiences, demonstrate strengths of market competitiveness, use a conglomerate business to provide high quality services to domestic and international customers, to increase profits for the corporation and shareholders, to make contributions to the nation's economy'.

Paragraph II: 'The company's motto is: unity, competition, pragmatism, and innovation'.

where companies may add or remove, highlight or downplay any stakeholders.²⁶ Of the 39 substantive changes, ten cases are oriented toward shareholders (such as adding or highlighting shareholders); 18 cases are oriented toward other stakeholders (such as adding or highlighting employees or deleting shareholders); 11 cases' amendment orientation is ambiguous (such as adding shareholders as well as employees). The results here show that purpose-clause amendments do not occur often. The reason may be that the purpose clause is a fundamental provision in the corporate constitution. As a foundation, the purpose clause tends to have great stability rather than frequent changes.

Table 3. Types of Purpose-Clause Amendments

Type of Change	Number of Firms
Stylistic (non-substantive)	5
Substantive	
Oriented toward shareholders	10
Oriented toward stakeholders	18
Unclear	11
Total	44

Source: data compiled by author.

The most common cause of amendments to the purpose clause is material asset reorganization (29 cases), often involving changes in major shareholders (such as top ten shareholders). It suggests that the identity of shareholders has great influence on the content of

²⁶ For instance, Aurora Optoelectronics Co., Ltd., had a comprehensive revision to its articles of incorporation in 2015 because of its material asset reorganization. The revised purpose clause deletes shareholders and focuses on customers and the corporate value. Its original purpose clause was read as follows: 'To seek solidarity, be brave for progress, be efficient and pragmatic, to continuously explore the development of the pharmaceutical industry, to increase the company's product market share, to use the most stringent methods and scientific management methods to research and produce reliable, high-quality and safe drugs; to be a modern corporation that has solid management foundations, good quality reputations, technology advancements, and bright development future, with the hope of remarkable economic profits for shareholders to acquire good returns'.

Its revised purpose clause is as follows: 'To place customers first, be an industry leader, be technology guaranteed, and be continuously innovative; to provide customers with high quality large size sapphire materials and products; to be an internationally competitive sapphire supplier and realize the maximization of corporate value'.

the purpose clause. When the amendment was caused by major asset restructuring, the change was substantive in content rather than merely stylistic. Other causes of change are rare. In the absence of ownership change, two companies expressly explained that the change to the purpose clause was intended to improve corporate governance.²⁷ Both of the companies added the importance of societal contribution in their revised purpose clauses.

Companies always conduct a careful review and design of their articles of incorporation before initial public offering (IPO). After IPO, their purpose clauses often remain unchanged. The IPO timing presents a good observation window to capture the contemporary trend in formulating the purpose clause. Figure 1 shows the relationship between the sample firms' IPO timing and their purpose clauses. The state-controlled sample companies demonstrate a stable trend of referring to shareholder value in their purpose clauses. Except for a decrease during the IPO period of 2001-2005, more than 80% of the state-controlled sample companies made express reference to shareholders in their purpose clauses. In comparison, the non-state-controlled sample companies demonstrate the rise and decline of shareholder value over the years. More than 90% of the non-state-controlled sample companies that undertook IPOs in the mid-late 1990s referenced shareholder interests. However, a significant decline of shareholder reference began at the turn of the century. In particular, a noticeable decline followed the 2006 new company law that expressly recognizes CSR. Less than 55% of the non-state-controlled sample firms that undertook IPOs during 2016-2017 referred to shareholders in their purpose clauses while 80% of the state-controlled sample firms still did. Interesting to note is that before the 2006 Company Act, the state-controlled and non-state-controlled companies did not demonstrate

²⁷ The two companies were Changchun High and New Technology Industry (Group) Inc. and Do-fluoride Chemicals Co., Ltd.

any statistically significant different pattern in terms of the shareholder value statement.²⁸

However, their divergence occurred after the new company law that gives express recognition of CSR.²⁹ The divergence may be explained from economic, legal and political perspectives. First, given that ample empirical evidence shows a negative association between state ownership and financial performance,³⁰ state-controlled firms may have a greater need to signal their commitment to shareholder value. Second, the translation of the CSR provision in the corporate statute into the practice of articles of incorporation requires sensitivity to law and corporate governance. It is often believed that China's non-state-controlled firms have better corporate governance than their state-controlled counterparts do.³¹ Thus, the state-controlled firms may have inertia to make the legal change. Third, under China's 'state capitalism' or 'authoritarian capitalism' where the state exerts influential power over the economy,³² the non-state-controlled companies may use the purpose clause as a strategic mechanism to signal their allegiance to the state. The Chinese Communist Party has formally declared that that 'building a harmonious

²⁸ The p-value for Z test for the period of 1990-1995 is 0.40654; p= 0.27572 for the period of 1996-2000; p= 0.77948 for the period of 2001-2005.

²⁹ The p-value for Z test for the period of 2006-2010 is p= 0.00072; p=0.01016 for the period of 2011-2015; p=0.00988 for the period of 2016-2017.

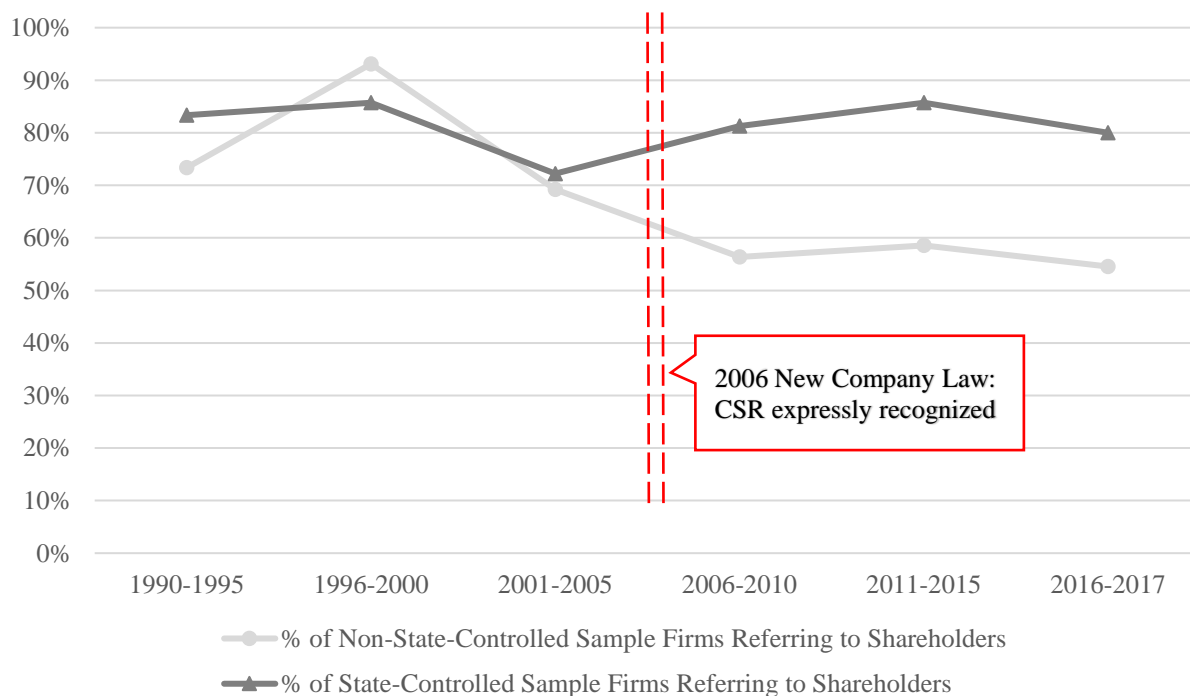
³⁰ Chong-En Bai et al., 'How Does Privatization Work in China?' (2009) 37 *Journal of Comparative Economics* 453 (showing that SOEs have better profitability after privatization); Zhangkai Huang and Kun Wang, 'Ultimate Privatization and Change in Firm Performance: Evidence from China' (2011) 22 *China Economic Review* 121 (showing that SOEs have better financial performance after privatization).

³¹ There is a vast body of literature on Chinese corporate governance. The comparison of state-controlled and non-state-controlled firms has been a standard practice in empirical studies of Chinese corporate governance. It is impossible to summarize all aspects of Chinese corporate governance here. Nevertheless, empirical studies generally show that non-state-owned firms have better performance with regard to different corporate governance indicators. For example, scholars have found that the pay for performance link is stronger for non-state-controlled firms. Martin J. Conyon and Lerong He, 'Executive Compensation and Corporate Governance in China' (2011) 17 *Journal of Corporate Finance* 1158; Michael Firth et al., 'Corporate Performance and CEO Compensation in China' (2006) 12 *Journal of Corporate Finance* 693.

³² Barry Naughton and Kellee S. Tsai eds., *State Capitalism, Institutional Adaptation, and The Chinese Miracle* (Cambridge University Press 2015); Li-Wen Lin and Curtis J. Milhaupt, 'We Are the (National) Champions: Understanding the Mechanisms of State Capitalism in China' (2013) 65 *Stanford Law Review* 697; James McGregor, *No Ancient Wisdom, No Followers: The Challenges Of Chinese Authoritarian Capitalism* (Prospecta Press 2012).

society’ is the long-term goal of the Chinese socialism.³³ According to the Party’s declaration, there are many existing problems that can cause conflicts and damage social harmony, mainly including: inequality in regional development, environmental pollution, unemployment, income inequality, etc. As the Party makes it clear, solving these problems is the Party’s current chief mission.³⁴ The non-state-controlled companies’ de-emphasis on shareholder value and their celebration of societal interests are consistent with the state’s interest in building ‘harmonious society.’

Figure 1. Relationship between the Sample Firms’ IPO Timing and Their Purpose Clauses



Source: data compiled by author.

³³ The idea of “harmonious society” was formally adopted in the Fourth Meeting of the 16th Central Committee of the Communist Party of China (October 11, 2006).

³⁴ See (n 33); see also Li-Wen Lin, “Corporate Social Responsibility in China: Window Dressing or Structural Change” (2010) 28 *Berkeley International Law Journal* 64, 88 (discussing the relationship between CSR and the government’s social harmony policy in China).

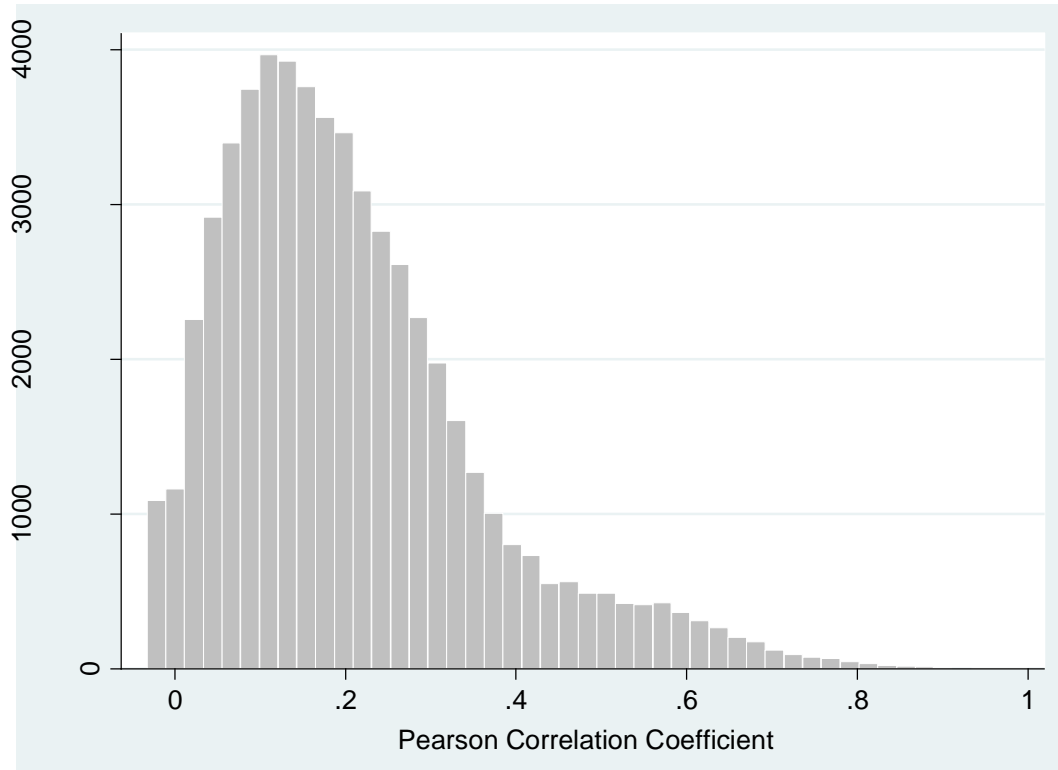
4.3. Similarity Analysis

Chinese listed companies are quite innovative in formulating their purpose clauses. Rather than using a boilerplate, each company constructs its own purpose statement. It is empirically important to understand what causes companies to have similar or different purpose clauses. Meanwhile, it is empirically challenging to compare similarities and differences given the variety of purpose clauses stated in qualitative terms. To analyze the similarity of the sample firms' purpose clauses, this article uses the word similarity function of NVivo, a qualitative data analysis software produced by QSR International and commonly used by academics. It uses a similarity metric (i.e., Pearson correlation coefficient) to measure the correlation between a pair of purpose clauses. The sample size (337) generates 56,616 pairs of purpose clauses. Each pair has a correlation coefficient to describe the similarity between two purpose clauses.

Figure 2 shows the distribution of the pair correlations. In the dataset, only one pair has a correlation coefficient as large as one, which means that only two companies have exactly the same purpose clause. Both of the companies are non-state-controlled, in the same industry and similar in their IPO timing. The most dissimilar pair has a correlation coefficient as small as -.032, which is close to zero correlation.³⁵ The average correlation coefficient is .208, which suggests a low correlation and great diversity in constructing the purpose clauses.

³⁵ The two companies are both non-state-owned companies, but in different industries and far apart in IPO timing (15 years apart).

Figure 2. Distribution of Purpose-Clause Correlation Pairs



Note: A correlation coefficient ranges between 1 and -1. The rule of thumb for interpreting the strength of correlation is as follows: 0 means no correlation; +.3 (-.3) indicates a weak positive (negative) relationship; +.5 (-.5) indicates a moderate positive (negative) relationship; +.8 (-.8) indicates a strong positive (negative) relationship; +1 (-1) indicates a perfect positive (negative) relationship.

To investigate factors that influence similarity, this article presents an ordinary least squared regression analysis with the correlation coefficient for a pair of purpose clauses as the dependent variable. Independent variables are as follows. First, the variable of whether the two companies are in the same industry (yes=1; no=0) anticipates that the companies are more likely to have similar purpose clauses if they are in the same industry. Second, the variable of whether the two companies retain the same law firm (yes=1; no=0) expects that law firms play an important role in framing the purpose clause and act as an important diffusion agent of legal

norms.³⁶ Third, the variable of whether both of the two companies adopt the current version of the purpose clause in the same period (both before 2006 or both in/after 2006 =1, otherwise 0) considers the potential effects of legal change introduced by the 2006 Company Act. Fourth, the regression analysis includes the variable of whether the two companies are of the same ownership type (both state-owned or both non-state-owned =1, otherwise=0). It expects that firms of the same ownership type are more likely to have similar purpose clauses. Fifth, as hypothesized in section 3, geographical proximity may play a role in diffusing legal norms. Therefore, it includes the variable of whether the two companies are headquartered in the same province (yes=1; no=0). Finally, the variable of logged asset difference considers that firms similar in size may adopt similar purpose clauses.

The regression analysis shows that all the independent variables are statistically significant ($p < .001$). Figure 3 shows the average marginal effects with 95% confidence intervals (CIs) based on the regression model.³⁷ The results suggest that companies have greater similarity in their purpose clauses when they are in the same industry, of the same ownership type, headquartered in the same province, use the same law firm, or adopt the clause in the same period; meanwhile, firms that have larger differences in asset size have greater dissimilarity in their purpose clauses. Among all the five dichotomous variables,³⁸ the time of adopting the purpose clause is a particularly salient factor. Companies follow trends in formulating their

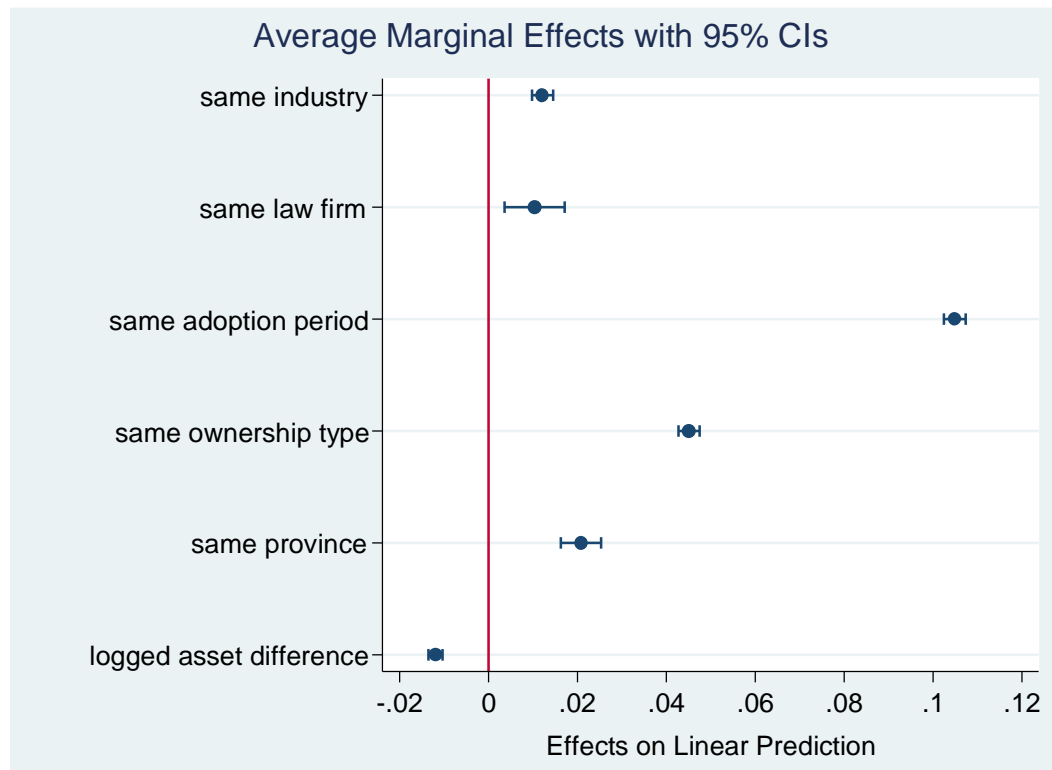
³⁶ There is a large body of sociological and organizational science literature on the diffusion of innovation. According to the literature, professions are important agents that spread new practices throughout the system. For a brief review of the literature, David Strang and Sarah A. Soule, 'Diffusion in Organizations and Social Movements: From Hybrid Corn to Poison Pills' (1998) 24 Annual Review of Sociology 265.

³⁷ Figure 3 also shows which variable is statistically significant. If the confidence interval does not include the value of zero effect (the red line), there is a statistically significant effect. All the confidence intervals in Figure 3 do not include the value of zero effect and therefore suggest statistically significant effects.

³⁸ In Figure 3, the only variable that is not a dichotomous variable but a continuous variable is logged asset difference.

purpose clauses. The 2006 Company Act plays a role in shaping the trend. The results suggest that the construction of corporate purpose evolves with the changing legal environment.

Figure 3. Relationships between Purpose Clause Similarity and Corporate Attributes



Overall, the similarity analysis confirms the great diversity of corporate purposes. Consistent with the hypotheses in section 3, the diversity arises from companies' internal attributes such as size, industry and ownership types. It also arises from the external environment in which companies operate, such as legal and geographical environments.

4.4. Financial Performance Analysis

Companies that emphasize shareholder value in their purpose clauses presumably would be expected to have better financial performance. Table 4 shows a panel analysis of the

relationship between financial performance and the shareholder value statement in the purpose clause during the period of 2015-2017. It shows that controlling for ownership type, number of employees and industry, companies whose purpose clause expressly references shareholders have inferior financial performance, compared to those whose purpose clause does not reference shareholders at all. In other words, companies that purposefully leave shareholders out of the purpose clause have better financial performance than those that expressly include shareholders. Table 4 shows that the coefficients for the variable of shareholder inclusion in the purpose clause are all negative. While the negative relationship is only marginally significant when financial performance is measured as ROA or ROE, it is statistically significant when performance is measured as ROIC.

The negative association between shareholder-oriented corporate purpose and firm financial performance is contrary to what one might expect. On the one hand, poor performing companies may have more incentives to use the purpose clause as a signaling device to demonstrate their commitment to profit maximization. Better performing companies may have more freedom in moving beyond shareholder value and promoting non-financial purposes, or may simply have less need to signal their commitment to shareholders. On the other hand, it could be possible that focus on shareholder value is detrimental to financial performance.³⁹ For example, a corporation may have problems to attract high-quality employees, loyal customers, reliable suppliers, etc. when such non-shareholder stakeholders feel that their rights are not well protected. Still, it is important to note that having a shareholder-oriented purpose clause in the

³⁹ Lynn A. Stout, *The Shareholder Value Myth* (Berrett-Koehler Publishers 2012) 47-60 (observing that empirical studies provide no clear evidence that shareholder-friendly governance structures are associated with better financial performance; reporting that some studies even show a negative association).

charter does not mean actual implementation of pro-shareholder decision-making and culture in the company. In this regard, the former explanation seems more plausible than the latter.

Table 4. Random-Effects GLS Regression of Financial Performance on Purpose Clauses (2015-2017)⁴⁰

	Dependent Variables		
	Return on Assets (ROA)	Return on Equity (ROE)	Return on Invested Capital (ROIC)
Shareholder Included in Purpose Clause (yes=1; no=0)	-1.483 [†] (.826)	-2.540 [†] (1.507)	-2.391* (1.193)
Ownership Type (state-controlled=1; otherwise=0)	-2.459*** (.676)	-4.160** (1.291)	-2.944** (1.011)
Number of Employees (thousand)	.013 [†] (.007)	.025 [†] (.013)	.020 [†] (.013)
Industry Dummies	Included	Included	Included
Constant	4.365*** (1.050)	15.644*** (1.477)	10.433** (3.140)
Number of Observations	956	955	923

Note: robust standard errors in parenthesis. [†] p<.1; * p<.05; ** p<.01; ***p<.001. All the data except for purpose clauses were collected from CSMAR, a widely used database on China's listed companies.

4.5. CSR Performance Analysis

As Table 2 shows, a large number of the sample companies expressly mention non-shareholder stakeholders such as nation, society, consumers and employees in their purpose clauses. It is expected that companies with special attention to non-shareholder interests in the

⁴⁰ For panel data analysis, a fixed-effects model is inappropriate to investigate time-invariant causes of the dependent variable. In this sample, many subjects change little or not at all in the independent variables. The Hausman test shows that the preferred model is random effects.

Without missing data, there would be 1011 (i.e., 337*3) observations. There are 55 unavailable observations for the purpose clause variable (because some firms that went public in 2016/2017 did not disclose information about their pre-IPO articles of incorporation and thus their purpose clauses for the years of 2015/2016 were unknown), 36 missing observations in ROIC, one missing observation in ROE.

purpose statement may have better performance of corporate social responsibility (CSR) than those without giving any remarks. As there is no consensus on CSR metrics, it is challenging to measure CSR performance.⁴¹ Nevertheless, a commonly accepted bottom-line indicator of CSR performance is whether the company publishes any CSR reports. Table 5 reports a regression analysis on the relationship between CSR reporting and the express inclusion of non-shareholder stakeholders in the purpose clause.

As Table 5 shows, controlling for ownership type, number of employees, financial performance and industry, companies that expressly refer to stakeholders in the purpose clause are more likely to publish CSR reports (i.e., all the coefficients for the variable of stakeholders included in the purpose clause are positive). However, the positive association is statistically insignificant. In other words, there is little evidence showing that express reference to non-shareholder interests in the purpose clause contributes to CSR reporting behavior. The empirical results are not surprising given that non-shareholder stakeholders have no clear right to sue under the corporate charter or the corporate statute. While a large number of the sample companies include the protection of non-shareholder stakeholders' interests in the purpose clause, none of them provides a clear enforcement right in the corporate charter. China's corporate statute also does not provide any enforcement rights for stakeholders such as employees, despite that the statute expressly declares that the corporation should protect employees' interest in its decision-making process.

⁴¹ Moreover, although some CSR performance rankings are available in China, these rankings focus on non-listed companies or top 500 listed companies by market capitalization, which are inappropriate to use for the sample.

Table 5. Random-Effects Probit Regression of CSR Reporting on Purpose Clauses (2015-2017)⁴²

	Dependent Variable: whether publishing a CSR report in a given year (yes=1; no=0)		
	(1)	(2)	(3)
Stakeholders Included in Purpose Clause (yes=1; no=0)	.816 (.622)	1.031 (.622)	.942 (.632)
Ownership Type (state-controlled=1; otherwise=0)	3.984*** (.705)	4.686*** (.763)	4.671*** (.809)
Number of Employees (thousand)	.378*** (.074)	.286*** (.070)	.286*** (.049)
Financial Controls:			
ROA	-.054 (.024)		
ROE		-.017 (.012)	
ROIC			-.024 (.015)
Industry Dummies	Included	Included	Included
Constant	.401 (1.748)	.384 (1.963)	-1.376 (1.941)
Number of Observations	918	917	885
Log Likelihood	-263.584	-265.946	-263.778
Wald Chi-Square (16)	111.39***	109.62***	122.59***

Note: * $p < .05$; ** $p < .01$; *** $p < .001$. The data for the dependent variable was manually collected from corporate annual reports (a Chinese listed company is required to make a statement in the annual report whether it publishes a stand-alone CSR report in the year) and corporate websites. The data for all the independent variables except for the purpose clause were collected from CSMAR, a widely used database on China's listed companies.

⁴² Probit and logit models are used when the dependent variable is a dichotomous variable. This author performed both models. The results of the logit model (unreported in this article) are similar to the results of the probit model reported in Table 5.

5. Implications and Questions

5.1. Implications for the Scholarly Debate about Corporate Purpose

Scholars have been debating the normative purpose of the corporation for a long time.⁴³ The debate has developed along two major competing views: shareholder wealth maximization versus stakeholder welfare maximization. The empirical charter data of Chinese listed companies reveals some blind spots in the scholarly debate.

The scholarly debate has largely continued in theoretical isolation with limited sensitivity to realities. The debate implicitly assumes that there must be only one best purpose for all corporations, regardless of individual corporate attributes and institutional variables. However, in reality, each corporation may have its unique organizational needs. For example, as found in this article, Chinese state-controlled companies, compared to non-state-controlled ones, are more likely to highlight shareholder value partly out of the need to signal profit commitment. In addition, different corporations may encounter different institutional demands. Corporate purpose cannot be defined without reference to the political, economic, and legal environments in which the corporation is embedded. The Chinese experience illustrates this institutional impact on the construction of corporate purpose. As this article shows, a great majority of the Chinese corporations consider the interests of a variety of stakeholders rather than taking shareholder wealth maximization as the single exclusive goal of the corporation. China's political economy and its recent legal recognition of corporate social responsibility are important factors in adopting this stakeholder perspective.

Moreover, the debate implicitly assumes that there should be a stable, unchanging purpose for the corporation. However, corporate purpose is not static and may change quite

⁴³ See (n 1).

quickly. The two-decade data examined in this article shows the evolution of the prevailing corporate purpose in China, from the celebration of shareholders in most of the corporate charters in the 1990s to a significant downplay of shareholders beginning after the turn of the century.

Furthermore, there is a gap between theoretical purposes and practical purposes. Scholars heavily use the terms of ‘maximization’ and ‘best interests’ when constructing the purpose theories. The practical experience in China suggests that companies rarely adopt the term of ‘maximization’ to describe their objectives. Instead, companies often use terms such as ‘good returns’ or ‘satisfactory returns’, even when they claim that the pursuit of shareholders’ interests is the sole purpose.⁴⁴ How to explain the gap between the idealistic purposes envisioned by scholars and practical purposes professed by corporations? One possible explanation from the perspective of economics is that scholars simulate the corporate purpose in a stylized world of economics where humans are rational actors and act to ‘maximize’ their utility or welfare, whereas corporate managers (and controlling shareholders) operating business in the real world are more sensitive to the problem of ‘bounded rationality’ and thus ‘aim at a “satisfactory” welfare achievement instead of the best possible outcome’.⁴⁵ From a legal perspective, maximum/best is a standard higher than good or satisfactory. Corporate managers (and controlling shareholders) whose behavior may be evaluated against the legal standard have incentives to set a lower bar in their own favor. Whether it is motivated by bounded rationality or self-interest, the practical use of ‘satisfactory returns’ (whether for shareholders only or for all stakeholders) moderates the tension between the two competing theories.

⁴⁴ For example, Zhongshan Public Utilities’ purpose clause is short and simple. It provides that ‘The purpose is to generate good economic returns for shareholders’.

⁴⁵ David G. Yosifon, ‘The Law of Corporate Purpose’ (2013) 10 Berkeley Business Law Journal 181, 219-221.

5.2. Pragmatic Questions

5.2.1. Does the Corporate Purpose Clause Matter?

The Chinese experience raises questions about whether the corporate purpose clause really matters in practice. As the empirical data shows, companies that highlight the interests of shareholders in the purpose clause do not demonstrate better financial performance; companies that celebrate the interests of non-shareholder stakeholders in the purpose clause are not more likely to engage in CSR reporting. It suggests that companies use the purpose clause to pay lip service for the interests of shareholders and/or other stakeholders.

The lack of practical importance may be attributable to the institutional constraints and the intrinsic nature of the purpose clause. As to institutional constraints, Chinese corporate governance generally suffers from the lack of enforcement.⁴⁶ Moreover, existing research shows that the Chinese Communist Party and the government play a big role outside the ordinary corporate governance organs described in the corporate charter.⁴⁷ The intrinsic nature of the purpose clause further exacerbates the enforcement problem. The empirical data shows that the language used in the purpose clauses is very broad and vague. The broadness and vagueness is necessary given that the purpose clause is a fundamental provision in the corporate constitution and serves as the guiding principle of the corporation. If the purpose clause is disputed in court, it will entail competent legal infrastructure to interpret the vague language. The legal institutional requirements include judges, attorneys and probably even corporate participants familiar with the application of broadly stated principles; appropriate legal proceedings and incentives for

⁴⁶ Donald C. Clarke, 'Law Without Order in Chinese Corporate Governance Institutions' (2010) 30 *Northwestern Journal of International Law & Business* 131.

⁴⁷ Lin and Milhaupt (n 32).

plaintiffs and attorneys to bring actions; courts capable of fashioning remedies without clear judicial guidance. According to publicly available information, the corporate purpose clause in the charter has never been used in any Chinese court case as an argument for or against any corporate behavior in the pursuit of shareholders' or non-shareholders' interests.⁴⁸ Chinese courts are still in the early stage of familiarizing themselves with the exercise of equity and discretion under corporate law.⁴⁹ Moreover, it is challenging for Chinese courts to apply the corporate purpose clause given that it is an indigenous legal innovation and there is limited foreign experience to consult with.

In addition to the concerns about macro-institutional capacity, the micro-rule design requires detailed implementation rules to realize the principle-based goal statement. The corporate purpose clause should not be a stand-alone provision in the charter. It requires complementary provisions to turn the abstract purpose into concrete measures. While the great majority of the sample Chinese companies provide that the corporate purpose is to pursue the interests of shareholders as well as other stakeholders, none of them adopts any relevant legal mechanisms to implement the purpose other than those already provided in the corporate statute. China's corporate statute requires employee participation in board decision making under certain circumstances. However, the statute does not give non-shareholder stakeholders such as employees any rights to initiate legal proceedings. Empirical studies consistently show that

⁴⁸ This author conducted a search in China Judgements Online, a Chinese court cases database maintained by the People's Supreme Court of China. By using the keyword "jingying zongzhi" (i.e., operating purpose) as used in the articles of incorporation, I found 144 civil cases with reference to the keyword. However, none of the cases involved any disputes that required any interpretation or application of the corporate purpose. The reference to corporate purpose was simply incidental, usually because it appeared in evidentiary documents.

⁴⁹ Empirical studies of Chinese corporate law mainly focus on the judicial application of the vague concept of fiduciary duties formally introduced in the Chinese corporate statute in 2006. Guangdong Xu, 'Directors' Duties in China' (2013) 14 *European Business Organization Law Review* 57; Donald C. Clarke and Nicholas C. Howson, 'Pathway to Minority Shareholder Protection: Derivative Actions in the People's Republic of China' in D. Puchniak, H. Baum, and M. Ewing-Chow eds., *The Derivative Action in Asia: A Comparative And Functional Approach* (Cambridge University Press 2012) 243-95.

employee participation in Chinese corporate governance remains largely symbolic.⁵⁰ While the corporate statute does not give non-shareholder stakeholders any enforcement rights, the corporate statute does not prohibit corporations from contractually granting rights to non-shareholder stakeholders. However, none of the sample corporations undertakes this contractual commitment to non-shareholder stakeholders in the charter. Without complementary legal mechanisms to realize the grand purpose statement, the purpose clause only serves a signaling or window dressing function.

Still, even without any institutional capacity complication, there is an intrinsic difficulty of enforcing multifaceted (and potentially inconsistent) corporate mandates. If corporate managers are required to serve the interests of shareholders, employees, and the broader society, etc., it becomes extremely difficult to police management discretion. Managers can make any decisions they want and plausibly claim to be serving the interests of a particular stakeholder group. That can effectively release managers from any liability. It partly explains why Chinese managers and controlling shareholders who exert influence on the content of the articles of incorporation tend to include multiple stakeholders in the purpose clause of the articles of incorporation.

Fundamentally, in comparative perspective, whether there is a clear corporate purpose, at least stated in the articles of incorporation, seems practically unimportant. As noted, because of the institutional constraints and intrinsic nature of the purpose clause, corporations with a firm-specific purpose declared in the charter, like Chinese listed firms, may simply use the purpose

⁵⁰ Under China's corporate statute, limited liability corporations and joint stock corporations are required to establish the supervisory board. At least a third of the supervisory board should be representatives elected by employees. Empirical studies often use the operation and quality of the supervisory board as a measure of employee participation in Chinese corporate governance. See e.g., Weian Li and Chen Hao, 'An Empirical Research of Supervisory Board Governance in China's Listed Companies,' (2006) 2006 Journal of Shanghai University of Finance and Economics 78 (in Chinese); Limin Wang and Shiquan Wang, 'An Empirical Analysis of Supervisory Board Governance of China's Private Listed Companies' (2007) 11 Inquiry Into Economic Issues 120 (in Chinese).

statement as a marketing device. Meanwhile, corporations in countries like the United States rarely have express corporate purpose provisions and seem to get by just fine. It suggests that the corporate purpose debate is more of an intellectual exercise than a practical problem that hinders the daily business operation.

5.2.2. *What Is the Relationship with ‘Social Enterprises’?*

The Chinese experience raises questions about the relationship between the regular business corporation and an emerging hybrid business form that simultaneously pursues profit-making and public good purposes, commonly referred to as ‘social enterprise’. In recent years, many countries including Canada, the United Kingdom and the United States have adopted a kind of social enterprises.⁵¹ The recent emergence of social enterprises aims to challenge shareholder wealth maximization as the single exclusive goal of the corporation. A common feature of the recent social enterprise statutes requires a purpose statement in the corporate charter. In addition to seeking profits, a social enterprise must declare its commitment to creating general public benefit and in some cases may be required to declare a specific benefit that the business produces. Does China need to follow the trend and adopt a form of social enterprise, especially given that the default (prevailing) corporate purpose of the regular business

⁵¹ For Canada, Gail Elizabeth Henderson, ‘Could Community Contribution Companies Improve Access to Justice?’ (2016) 94 The Canadian Bar Review 209; Carol Liao, ‘A Critical Canadian Perspective on the Benefit Corporation’ (2017) 40 Seattle University Law Review 683. For Europe, European Council, A Map of Social Enterprises and Their Eco-System in Europe: Synthesis Report (2015). For UK, see David Cabrelli, ‘A Distinct “Social Enterprise” Law in the UK: The Case of the CIC’ (2016) Edinburgh School of Law Research Paper No. 2016/27, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2888486>. For US, J. Haskell Murray, ‘The Social Enterprise Law Market’ (2016) 75 Maryland Law Review 541, 543-555 (providing an overview of the social enterprise laws in the United States); J. Haskell Murray, ‘Social Enterprise Innovation: Delaware’s Public Benefit Corporation Law’ (2014) 4 Harvard Business Law Review 345 (evaluating mechanisms to hold directors responsible under the Delaware law).

corporation is already oriented toward a wide range of stakeholders including society?⁵² More fundamentally, when a contractual approach to corporate purpose is adopted, what is the purpose of adopting the legal form of social enterprise? A major difference between the contractual approach to corporate purpose for the regular business form and the required dual purposes for the social enterprise is that the former gives wide discretion to the corporation to decide whether to provide any contractual commitment to stakeholders while the latter statutorily mandates some legal commitments to public good purposes. For instance, both the UK community interest company and the British Columbia (Canada) community contribution corporation are subject to asset-lock and dividend restrictions to ensure that the corporate assets and profits are devoted to public goods rather than distributed to shareholders.⁵³ In addition, the western social enterprise laws have more teeth because shareholders can sue if they believe the board of directors is not pursuing the entity's social purpose.⁵⁴ This would not be a viable claim under Chinese corporate law.⁵⁵

Still, the Chinese corporations' contractual approach and the modern social enterprise statutes share an important similarity in enforcement. While modern social enterprise statutes have a vision beyond profit maximization for shareholders, they do not provide any enforcement

⁵² To date, China has not adopted any modern social enterprise law. Though it has been argued that China has the 'social welfare enterprise' (shehui fuli qiye) as a form of social enterprise, the social welfare enterprise is not a modern business corporation and has a historical root in the 1950s. The purpose of the social welfare enterprise is legally defined, i.e., to provide disabled people with employment. The social welfare enterprise is not a corporation and it does not have governance features anywhere comparable to the so-called 'benefit corporation' in the US, the community contribution company in Canada, or the community interest company in the UK.

⁵³ BC Business Corporations Act, [SBC 2002] Chapter 57, Part 2.2; UK Companies (Audit, Investigations and Community Enterprise) Act 2004 and the Community Interest Company Regulations 2005.

⁵⁴ This legal proceeding is often called the 'benefit enforcement proceeding'.

⁵⁵ See (n 48). In addition, the most relevant Chinese court decision is a case concerning the enforcement of the CSR provision (Article 5) in the corporate statute. In the case of Dai Ping v. Tangde Electronic (China) Co., Ltd. (Guangdong Huizhou Municipal Intermediate Peoples' Court, Jun. 21, 2011) (China Judgements Online), the court opinion suggests that CSR is not a duty owed to any particular stakeholder such as an employee but a duty owed to overall stakeholders. An individual stakeholder such as an employee cannot make a claim based on the CSR provision. For detailed discussion, see Li-Wen Lin, 'Mandatory Corporate Social Responsibility? Legislative Innovation and Judicial Application in China' (forthcoming) American Journal of Comparative Law.

rights to those other than shareholders. Some social enterprise statutes in the United States even expressly disclaim that directors owe any fiduciary duties to various stakeholder beneficiaries named in the purpose statement.⁵⁶ Likewise, the sample Chinese corporate charters do not provide any enforcement rights to various named non-shareholder beneficiaries. As the articles of incorporation are approved by shareholders rather than non-shareholder stakeholders, the contract (i.e., the articles of incorporation) is between the corporation and its shareholders. Non-shareholder stakeholders may argue that they are intended third-party beneficiaries if the purpose clause expressly protects their interests. Under the contractual approach, the corporation may adopt a defensive strategy by including a ‘no non-shareholder beneficiary clause’ in the charter to prevent non-contracting parties from making any intended third-party beneficiary claim.⁵⁷ Without credible enforcement by those affected by the proclaimed corporate purpose, the special incorporation of a social enterprise is more of a high-profiled marketing strategy whereas a stakeholder-oriented purpose clause in a regular business organization’s charter is no more than a low-profiled branding device.

6. Conclusion

As a theoretical matter, corporate purpose seems a fundamental issue of corporate law. However, as a matter of practice, the corporate purpose articulated in the articles of incorporation

⁵⁶ Both Colorado and Delaware benefit corporation laws deny that directors owe any duty to a beneficiary of the public benefit purpose because of that person’s status as a beneficiary. COLO. REV. STAT. ANN. §7-101-506(2)(a); DEL. CODE ANN. Tit. 8, § 365(b). For more detailed analysis, see Joan MacLeod Hemingway, ‘Corporate Purpose and Litigation Risk in Publicly Held U.S. Benefit Corporations’ (2017) 40 Seattle University Law Review 611, 622-625.

⁵⁷ Existing CSR literature has shown that some corporations have adopted a “no-third-party-beneficiary” clause in supply contracts that incorporate labor and environmental standards. The purpose of the clause is to prevent workers and others who appear to be protected by the labor and environmental standards in the contract from making a third-party beneficiary claim. See Li-Wen Lin, ‘Legal Transplants through Private Contracting: Codes of Vendor Conduct in Global Supply Chains as an Example’ (2009) 57 American Journal of Comparative Law 711, 743.

seems largely irrelevant. The Chinese experience suggests that the lack of legal importance of the corporate purpose clause stated in the articles of incorporation is attributable to the institutional constraints and the intrinsic nature of the corporate purpose. The Chinese experience also shows that the formulation of corporate purpose is influenced by a set of organizational, sectorial, regional, societal and national conditions and it may evolve over time. Given changing demands, there is probably no fixed, one-size-fits-all purpose for all corporations around the world.